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OCT 24 1930
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 517.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY and TEXARKANA AND FORT SMITH RAILWAY COMPANY,

Appellants,

v.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

MOTION BY APPELLANTS TO ADVANCE.

FRANK H. MOORE,
CYRUS CRANE,
Solicitors for Appellants.

SAMUEL W. MOORE,
Of Counsel.

October 24, 1930.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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Come now the appellants in the above-entitled cause and move that the said cause be advanced for an early hearing, and in support of their motion, make the following brief statement of the matter involved and the reasons supporting the motion.

The matter involved in this case is the action of the lower court in sustaining the validity of two orders entered by the Interstate Commerce Commission on November 4,

1929, and July 30, 1929, respectively (Exhibits A and B to the petition (R. 3)),* requiring the appellants and other carriers of the country to "cease and desist . . . from the transportation or movement of private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates", and amending the pass regulations of the Commission to conform therewith. These orders were entered in a proceeding brought on the Commission's own initiative and designated as Docket No. 17757, "In the Matter of Use of Private Passenger Train Cars," reported in 155 I. C. C. 775.

Appellants were plaintiffs below, and brought this suit against the Commission and the United States under the provisions of the Urgent Deficiencies Appropriation Act of October 22, 1913, in the Western Division of the Western District of Missouri, to enjoin, set aside, annul and suspend said orders, in part only. Plaintiffs alleged that the said orders, in so far as they prohibit the movement by one carrier of the office car of another company, when occupied exclusively by the officers and employees of the latter company, traveling upon business in connection with the operation of the railroad of such latter company, upon such terms of compensation for the movement of the car as the interested carriers may mutually agree upon, were outside the scope of the Commission's power and authority, were arbitrary and unlawful, were unsupported by substantial evidence; and that their enforcement will constitute a denial

* References are made to pages of the certified unprinted record prepared by the clerk of the District Court and on file with the clerk of this Court, as the record has not yet been printed.

of plaintiffs' right to make lawful use of its property, a denial of plaintiffs' liberty of contract, and a denial of due process of law, all in violation of the Fifth Amendment to the Constitution; as fully specified in plaintiffs' petition (R. 3) and in the assignment of errors (R. 47). It was not sought to modify or disturb said order in any other respect.

The district court, composed of three judges as required by law, denied all the contentions of plaintiffs and entered an order or decree dismissing plaintiffs' petition (R. 44), from which action plaintiffs have taken this appeal to this Court (R. 45). The case was docketed in this Court on October 18, 1930.

The reasons why the case should be advanced are the following:

It is provided in the said Urgent Deficiencies Appropriation Act of October 22, 1913, that the final judgment or decree of the district court in cases brought to enjoin, set aside, annul or suspend, in whole or in part, an order of the Interstate Commerce Commission, may be reviewed by the Supreme Court of the United States upon appeal, and that appeals in such cases shall have priority in hearing and determination over all other cases in said Court except criminal cases.

The said orders of the Commission became effective according to their terms on January 15, 1930, but the effective date was postponed by the Commission until September 1, 1930, on which date they went into effect, and are now in effect.

WHEREFORE, appellants move that the case be advanced and set down for argument at as early a date as practicable.

Respectfully submitted,

FRANK H. MOORE,
CYRUS CRANE,
Solicitors for Appellants.

SAMUEL W. MOORE,
of Counsel.

October 24, 1930.